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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/148526

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 04, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 13, 2013, at Juneau, Wisconsin.

The issue for determination is whether the Dodge County Department of Human Service (the agency) correctly denied Petitioner's application for FoodShare benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Katie Sanchez, Economic Support Specialist, bilingual  
Dodge County Department of Human Services  
143 E. Center Street  
Juneau, WI 53039-1371

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. On or about February 22, 2013, Petitioner applied for FoodShare benefits. (Exhibit 5)
3. On March 7, 2013, the agency sent Petitioner a notice indicating that her application for FoodShare benefits was denied because her income was over the program limit. (Exhibit 5)

4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 4, 2013. (Exhibit 1)
5. Petitioner receives \$353.16 per child, per month in child support for her two children, for a total of \$706.32 per month, although the oldest child is turning 18 this month, which will cause the cessation of child support for that child. (Testimony of Petitioner)
6. Petitioner works at Wal-mart and provided to the agency two, bi-weekly paystubs for pay periods ending 2/08/13 and 2/22/13 as proof of her earned income. (Exhibit 8, pgs. 7-8)
7. Petitioner receives rental income in the amount of \$170.09 per month. (Exhibit 8, pg. 6)
8. Petitioner was also self-employed operating two bait shops, the Baits Motel which has been running since at least 2011 and By the Dam Bait, which came into operation in October 2012. (Testimony of Petitioner)
9. At the time of the hearing, Petitioner's accountant had not yet completed her 2012 tax returns. Consequently, the agency relied upon Petitioner's 2011 schedule C for the Baits Motel to determine her self-employment income. (Testimony of [REDACTED]; Exhibit 8)

### DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1.* Eligibility and benefits are based on prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1.*

"Most FoodShare groups are considered categorically eligible if their gross income is at or below 200% FPL". *FSH §4.2.1.1* Effective 10/1/12 to present, 200% of FPL for a family of 3 is \$3182 per month. *FSH §8.1.1*

#### *Wal-mart Income*

Petitioner's paystubs reflect three different types of income: regular wages, Sunday pay and something designated CO STK CONT. Petitioner's income from Wal-Mart is calculated as follows using an average of 2.15 bi-weekly pay periods per month, as required by the Process Help Manual at §16.4.1:

Stub 1 shows 61.97 hours, stub 2 shows 55.57 hours worked:	61.97
	+55.57
	117.72 total hours worked

$117.72 \div 2 = 58.86$  average hours worked per pay period.

$58.86 \times \$13.37$  per hour = \$786.96 average earned per pay period

$\$786.96 \times 2.15$  average bi-weekly pay periods per month = \$1691.96 average monthly regular wages

Each stub shows a \$3.00 CO STK CONT payment per pay period.

$\$3.00 \times 2.15$  average pay periods per month = \$6.45 average CO STK CONT payments per month

One stub reflected 7.92 hours of Sunday premium worked at \$1.00 per hour

$7.92 \text{ hours} \div 2 = 3.96$  average hours of Sunday premium worked per pay period

At \$1.00 per hour we have \$3.96 average Sunday premium earned per pay period

$\$3.96 \times 2.15$  average bi-weekly pay periods per month = \$8.51 average Sunday Premium earned

Petitioner's total monthly income from Wal-Mart is as follows:

\$1691.96 regular wages  
 +\$6.45 CO STK CONT  
 +\$8.51 Sunday Premium

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\$1706.92

*Self-employment Income*

*FSH §4.3.3.5.2* describes when IRS tax forms should be used to determine self-employment income:

Use IRS tax forms to average income only if:

1. The business was in operation at least 1 full month during the previous tax year,
2. The business has been in operation 6 or more months at the time of the application, and
3. The person does not claim a significant change in circumstances since the previous year.

If all 3 conditions are met, and the tax forms are not complete, ask the client to either complete the appropriate tax form(s) or have the client complete one SEIRF  for the previous year's circumstances. Completing the form(s) is solely the client's responsibility.

Petitioner claimed a change in circumstances with regard to her income from the Baits Motel, specifically a significant decrease in sales due to a drought. In addition, at the time Petitioner applied for FoodShare benefits in February 2013, the By the Dam Bait store had not been in operation for six or more months. Consequently, neither business met all three conditions for use of IRS tax returns. As such, the 2011 tax forms for the Baits Motel should not have been used to determine income. Even if the agency did not believe Petitioner's assertion that circumstances changed for the Baits Motel, Petitioner did not have her tax forms completed. As such, *FSH §4.3.3.5.2* directs the use of the SEIRF (Self Employment Income Report Form)

Petitioner completed SEIRFs for October 2012 through March 2013 (Exhibit 3):

For the Baits Motel:

October 2012 -\$2270.02  
 November 2012-\$4609.41  
 December 2012+\$1900.00  
 January 2013 +\$5878.70  
 February 2013 +\$3520.23  
 March 2013 -\$309.50

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Total income: \$4110

$\$4110 \div 6 = \$685.00$  average monthly self-employment income from The Baits Motel.

For By the Dam Bait:

October 2012 -\$2580.95  
 November 2012-\$717.74  
 December 2012 -\$759.63  
 January 2013 +\$119.75  
 February 2013 -\$93.97  
 March 2013 -\$917.68

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Total income: -\$4950.22

There was an overall loss, so there is no countable self-employment income from the By the Dam Bait shop.

*Petitioner's total income*

Adding all of Petitioner's monthly income we have:

\$685.00 Self-employment income from the Baits Motel  
 +\$1706.92 Wal-mart income  
 +\$706.32 Child-Support income  
 +170.09 Rental Income

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\$3268.33

For a family of 3, 200% of FPL is \$3182 per month. *FSH §8.1.1*. Consequently, Petitioner's income of \$3268.33 is over the income limit.

### **CONCLUSIONS OF LAW**

The agency correctly denied Petitioner's February 2013 application FoodShare benefits.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

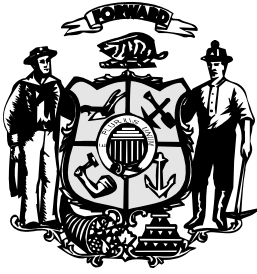
Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of May, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 17, 2013.

Dodge County Department of Human Services  
Division of Health Care Access and Accountability